

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
ATHENS COUNTY

In re: B.M. (DOB: 08/23/2012)	:	
J.C. (DOB: 07/31/2013)	:	Case Nos. 24CA9
M.C. (DOB: 01/28/2017)	:	24CA15
V.C. (DOB: 12/05/2019)	:	
	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Adjudicated Dependent Children.	:	
	:	<b>RELEASED: 11/15/2024</b>

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APPEARANCES:

Richard D. Hixson, Zanesville, Ohio, for appellant mother.

Christopher Bazeley, Cincinnati, Ohio, for appellant father.

Brittany E. Leach, Athens County Assistant Prosecutor, Athens, Ohio, for appellee.

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Wilkin, J.

{¶1} Appellants, L.M. (the children’s mother) and J.C. (the children’s father), separately appeal a judgment of the Athens County Court of Common Pleas, Juvenile Division, that granted Athens County Children Services permanent custody of their four children: 11-year-old B.M.; 10-year-old J.C.; 7-year-old M.C.; and 4-year-old V.C. We sua sponte consolidated the cases.

{¶2} The mother raises three assignments of error. In her first two assignments of error, she argues that the trial court erred by granting the agency permanent custody of the children. The mother contends that the court “abused its discretion” by determining that (1) the children cannot be placed with her within a reasonable time or should not be placed with her and (2) placing the children in the agency’s permanent custody serves the children’s best interests. In her third assignment of error, the mother asserts that the trial court erred by failing to appoint an attorney to represent the

children. She claims that the trial court should have appointed counsel to represent the children because the children's wishes conflicted with the guardian ad litem's recommendation.

{¶3} The father raises two assignments of error. In his first assignment of error, he asserts that the evidence fails to support the trial court's findings that (1) the children cannot be placed with him within a reasonable time or should not be placed with him and (2) placing them in the agency's permanent custody is in their best interests. In his second assignment of error, the father asserts that the trial court abused its discretion by overruling his motion to continue the December 21, 2023 permanent custody hearing.

{¶4} After our review of the record and the applicable law, we do not find any merit to the mother's or the father's assignments of error. Therefore, we affirm the trial court's judgment.

#### FACTS AND PROCEDURAL BACKGROUND

{¶5} On May 25, 2022, the agency filed complaints that (1) alleged that the children were neglected and dependent and (2) requested temporary custody of the children. The complaints alleged the following. On April 20, 2022, the agency received a report that the mother had a substance abuse problem. She later tested positive for methamphetamines. On May 24, 2022, the agency received a report that the mother was hallucinating. An agency caseworker responded to the mother's home and "found it to be in disarray." The caseworker believed that the mother appeared to be hallucinating.

{¶6} The agency also filed a motion for emergency and pre-dispositional orders. The agency asked the court to place the children in its emergency custody pending a full hearing. On May 25, 2022, the trial court granted the agency ex parte emergency custody of the children.

{¶7} On August 11, 2022, the trial court adjudicated the children dependent. The parties agreed to proceed to disposition, and the trial court entered a dispositional order that placed the children in the agency's temporary custody.

{¶8} On April 7, 2023, the agency filed a motion to modify the disposition to permanent custody. The agency alleged that (1) under R.C. 2151.414(B)(1)(a), the children cannot be placed with either parent within a reasonable time or should not be placed with either parent and (2) placing the children in its permanent custody is in their best interests.

{¶9} On August 29, 2023, the trial court held a hearing to consider the agency's permanent custody motion. At the start, the court observed that the father was not present. The court stated that the father had called the court and stated that he was at work. The father asked to participate via telephone. The court denied his request because it was "made at the eleventh hour." The court further stated that the father had participated in previous court conferences via telephone and had "not conducted himself in a professional manner" so as to allow the court "to conduct business adequately." The court suggested that if it allowed the father to participate via telephone, nothing would be "accomplished in terms of the hearing which is not fair to any party in this circumstance." The court then proceeded with the hearing.

{¶10} The first witness, Jerome Reed, a certified scientist with Forensic Fluids, testified as follows. Forensic Fluids processed 27 drug screens for the mother, and 25 of those tests were positive for drugs, i.e., primarily amphetamine, methamphetamine, and THC. The mother most recently submitted a drug screen on August 15, 2023, and it was positive for methamphetamine, amphetamine, and THC.

{¶11} Caseworker Jacelyn McCaughey testified as follows. The four children have been in the agency's temporary custody since May 2022. The agency developed a case plan for the family, and it required the mother to (1) engage in substance use treatment and follow the treatment recommendations, (2) complete drug screens, (3) obtain safe and stable housing, (4) refrain from engaging "with unsafe people," and (5) obtain mental health treatment.

{¶12} The mother engaged in several treatment programs. She attempted to engage with Health Recovery Services (HRS), but the mother believed that she needed more help than what HRS could offer. The mother attempted to enter Rural Women's Recovery program, but she was not accepted because her mental health was "too severe for what they are able to accommodate." She also obtained "bed dates for treatment at Angel's Harbor but did not go to those bed dates." The mother went to Clearview (a detox center in Perry County), but she did not "like being at Clearview," and "she left against staff advice." The mother additionally went to "the counseling center in Portsmouth but was only there for a few days." The week before the hearing, the mother went to Ridgeview Hospital, and once "she completes detox there," she plans to enter Angel's Harbor.

{¶13} The mother had experienced “some type of trauma with Spero,” another treatment program. The mother “had worked with Spero for several years and was working with them when” McCaughey started working with the family. McCaughey explained that the mother had worked with this treatment provider for several years, and while the mother was attempting to leave an “unsafe” partner, one of the providers, Nicholas Barton, helped the mother move out of this residence. Barton “attempted to turn the relationship sexual several different times.” He gave the mother “three different vehicles,” placed her “on his phone plan,” helped her with rent, and provided other financial assistance. The mother stated that “because of the trauma that was associated with . . . her substance use counselor[,] she struggled with trusting counselors, and it made it really hard for her to be able to engage with anyone, and on a meaningful level.” The mother stated that if she attempted to end the relationship with Barton, he would tell her that she would lose her children, her life would be “ruined,” and “she couldn’t live without him.” If the mother “ignored his sexual advances he would . . . become mean and aggressive and sometimes take away the financial support that he was providing until she gave him what he wanted.” This relationship continued for about eight years, and it still is “ongoing.”

{¶14} McCaughey stated that the mother has not alleviated any of the agency’s concerns and has not completed any of her case plan objectives. McCaughey indicated that the agency’s concerns “have just increased.”

{¶15} McCaughey further explained the agency’s concerns with respect to the father. The case plan required the father to contact the agency to establish visits with the children. The father “did not cooperate with being able to get visitation set up with

the children whatsoever,” and he has not had any visits or communication with the children.

{¶16} When McCaughey spoke with the father, he appeared to exhibit “some very paranoid behaviors.” The father believed “that there is some corruption going on.” The father indicated that “he would not engage in the court process or come to hearings unless the agency paid him for the days[] lost wages, his gas, and the child support that he was having to pay coming out of his check, and for his own suffering for the children being in custody.” The father reported that he is homeless and “would not accept any form of assistance with obtaining housing.” The father also “was very angry that he could not have phone calls with the children in the middle of the school day because he reported that was his constitutional right to do so.”

{¶17} McCaughey visits the children at least monthly. The two boys are placed in one foster home, and the two girls are placed in a different home. The children are doing well in their current placements. The children are safe and stable in the foster placements and “appear to be very happy.” The children “really care for their foster parents, and are having all of their needs provided for. They are thriving in those homes.”

{¶18} The boys “have a lot of anger towards” the father. They stated that the father is “mean” and that they “do not want to see him, or have any interaction with him at all because of his abuse” when the mother and the father “were together.”

{¶19} The mother testified and stated that she does not have any concerns regarding the father’s ability to care for the children. She believes that he could provide the children with their basic needs.

{¶20} The mother explained that she last used methamphetamine about a week before the August 29, 2023 hearing. She currently is in “a dual diagnosis hospital” for “rehab” and has plans to enter a 90-day program.

{¶21} Kathryn Colombo, the children’s guardian ad litem (GAL), testified and recommended that the court place the children in the agency’s permanent custody. She stated that the children “are doing very well” in the foster homes, “love their foster parents,” and appear “to be happy, healthy and safe.”

{¶22} After the GAL’s testimony, the mother’s counsel asserted that the GAL had not conducted an adequate investigation. The court agreed and continued the matter to allow a new guardian ad litem to conduct a new investigation and write an additional report.

{¶23} On October 23, 2023, the hearing resumed. The father appeared for this hearing, and the court noted that this appearance was his first appearance in court. The father stated that he would like an attorney, so the court continued the hearing.

{¶24} Frank A. Lavelle subsequently made an appearance on the father’s behalf. Shortly thereafter, Lavelle filed a motion to withdraw. Lavelle alleged that he attempted “to productively communicate with” the father, but the father “would not schedule times to discuss his case, and was extremely rude and even vicious on the telephone, with [Lavelle]’s office.” The court granted Lavelle’s motion to withdraw and appointed new counsel.

{¶25} On December 21, 2023, the hearing resumed. The father’s attorney stated that he believed that the father “would like to have a new attorney.” The court stated that it would not continue the hearing to allow the father to obtain a new attorney.

Instead, the court advised the father to consult with his current attorney and attempt to resolve the matter. Alternatively, the court stated that the father could be his own attorney, and the current attorney would remain as standby counsel. The father stated that he would like the court to continue the hearing and repeated that he wanted a new attorney. The court stated that the father has “been through two” attorneys due to his behavior. The court reiterated that the father could represent himself or have the current attorney represent him. This attorney indicated, however, that he “would be more comfortable as standby counsel” due to “some of the things that [the father] shouted at me and in my office.” The court thus asked the attorney to remain as standby counsel and continued with the hearing.

{¶26} The new GAL, Tara Huffman, testified and recommended that the court place the children in the agency’s permanent custody.

{¶27} The court offered the father an opportunity to testify, but he stated that he would not be testifying.

{¶28} On March 20, 2024, the trial court granted the agency permanent custody of the children. The trial court determined that (1) the children cannot be placed with either parent within a reasonable time and should not be placed with either parent and (2) placing the children in the agency’s permanent custody is in their best interests.

{¶29} In concluding that the children cannot be placed with either parent within a reasonable time and should not be placed with either parent, the court found that R.C. 2151.414(E)(1), (2), (4), and (16) applied. The court noted that the mother has struggled with drug addiction and mental health issues for “several years” and that she continued to abuse drugs throughout the “majority” of the case. The court further



pointed out that the mother had attempted nine “different substance use treatments,” including “outpatient, in-patient, and detox centers.” The court also stated that the mother “admitted to lying to [the] [c]ourt about her use.” The court concluded that the mother has not made any progress to overcome her drug addiction and did not believe that she would “benefit from services in the near future.”

**{¶30}** The court additionally found that the mother “continue[d] to make decisions in her personal life that could place the children at risk.” The court explained:

Unfortunately, [the m]other was susceptible and likely taken advantage of by a prior service provider. This continued for several years and the [c]ourt believes that the relationship has continued. This individual has preyed on [the mother] by using financial means and possibly abuse. The agency, throughout this case, has made attempts to help [the mother] and ensure her safety. [The mother] has chosen a different route and still engaged with this risky and likely unsafe individual. By doing so, the [c]ourt is convinced that [the mother] does not appreciate the difference between a safe and stable environment and one that is not.

**{¶31}** The court determined that the combination of all of the foregoing circumstances also caused the mother to lack stable housing and the ability to provide for the children’s basic needs.

**{¶32}** With respect to the father, the court stated that “[t]hroughout the majority of this case, [the f]ather refused to engage with [the agency,] the [c]ourt, or his children.” When the father appeared for court hearings, he was “combative and resistant to help.” The court found that “[b]ased upon [the father’s] lack of involvement for a majority of this case, his concerning behavior when involved, and his lack of commitment to a stable living environment for the children, the children would not be safe nor thriving if returned to [the f]ather.”

{¶33} The court next evaluated whether placing the children in the agency's permanent custody would serve their best interests. The trial court first considered the children's interactions and interrelationships. The court stated that none of the children have "lived an ideal childhood" as a result of their parents' conduct. The court found that the children "are doing well and are bonded in their respective foster caregiver home." The court further recognized that "[t]he children do love [their mother] and are bonded with her."

{¶34} The court found that the children's relationship with the father "has been nonexistent during this case." The court noted that the father has not engaged with the court or with the agency and has not visited or communicated with the children. The court further observed that B.M. and J.C. "reported anger toward" the father. The court determined that the children's relationship with the father "is strained at best as there has been no communication or interaction between [the f]ather and the children for over a year."

{¶35} Next, the trial court considered the children's wishes. The court observed that the three older children would like to reunify with the mother and their siblings. The four-year-old child "did advocate to remain with her foster caregiver." The court nevertheless determined that the four-year-old child was "too young to meaningfully engage in this case." The court further noted that both of the children's GALs recommended that the court place the children in the agency's permanent custody.

{¶36} The court also reviewed the children's custodial history. The court stated that the children have been in the agency's temporary custody since May 24, 2022.

{¶37} The court next determined that the children need a legally secure permanent placement and that they cannot achieve that type of placement without granting the agency permanent custody. The court stated that the mother’s drug addiction has left her unable to provide the children with a safe and stable home environment. The court also found that the mother “places herself with unsafe people,” which shows that she “does not recognize the need for a safe environment for her children.” The court thus concluded that the mother’s “protective capacity” is questionable and found a high likelihood that the children would be abused, neglected, or dependent if the court returned them to her care. The court additionally indicated that the father’s conduct left the agency unable to ascertain whether he has a suitable home environment, the ability to provide for the children’s basic needs, or “mental stability.” Consequently, the court determined that the children cannot achieve “stability and safety” without granting permanent custody to the agency.

{¶38} The court thus concluded that placing the children in the agency’s permanent custody is in their best interests and granted the agency permanent custody of the children. These appeals followed.

#### ASSIGNMENTS OF ERROR

##### CASE NUMBER 24CA9

- I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT THE MINOR CHILDREN COULD NOT BE PLACED WITH THEIR MOTHER WITHIN A REASONABLE TIME OR SHOULD NOT BE SO PLACED.
- II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE BEST INTERESTS OF THE MINOR CHILDREN TO PERMANENTLY TERMINATE THE PARENTAL

RIGHTS OF THEIR PARENTS AND PLACE THEM IN THE PERMANENT CUSTODY OF ATHENS COUNTY CHILDREN SERVICES.

- III. THE TRIAL COURT ERRED IN FAILING TO APPOINT AN ATTORNEY FOR THE MINOR CHILDREN WHEN A CONFLICT EXISTED BETWEEN THE GUARDIAN AD LITEM'S RECOMMENDATION AND THE WISHES OF THE MINOR CHILDREN, PURSUANT TO OHIO JUV.R. 4(C).

CASE NUMBER 24CA15

- I. THE TRIAL COURT'S DECISION TERMINATING [THE FATHER'S] PARENTAL RIGHTS IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
- II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED [THE FATHER'S] MOTION FOR A CONTINUANCE.

I. Permanent Custody Judgment

{¶39} For ease of discussion, we have combined our review of the mother's first and second assignments of error and the father's first assignment of error.

{¶40} In her first and second assignments of error, the mother asserts that the evidence fails to support the trial court's findings that (1) the children cannot be placed with her within a reasonable time or should not be placed with her and (2) placing the children in the agency's permanent custody is in their best interests. Regarding the first finding, the mother contends that she currently is engaged in a residential substance abuse treatment program and is making progress. The mother states that she "was in a position to be clean and sober for a reasonable time beyond the December [2023] hearing" and that she could have reunified with her children within a reasonable time.

{¶41} As to the children's best interests, the mother argues that the evidence shows that the children wish to be reunified with her and wish to remain living with their

siblings. She contends that the trial court should have granted her additional time to complete treatment so that the children could reunify with her and with each other.

{¶42} In his first assignment of error, the father likewise argues that the evidence fails to support the trial court's findings that (1) the children cannot be placed with him within a reasonable time or should not be placed with him and (2) placing them in the agency's permanent custody is in their best interests. With respect to the first finding, the father alleges that "the trial court failed to justify [its] decision by citations to the record" and that the record does not "support a finding that the children could not be placed with [him] within a reasonable time and should not be placed with him." The father does not elaborate on these points.

{¶43} Concerning the children's best interests, the father states that the children's GAL did not observe any interactions between him and the children. He further asserts that he informed the trial court "that he wanted to engage with the process and find ways to more effectively work with" the agency. The father recognizes that the two "boys expressed their anger at [him]," but he contends that "nothing in the record" shows "that any of the children articulated a desire to not live with him." The father also claims that the children's custodial history weighs against a finding that placing the children in the agency's permanent custody is in their best interests. He contends that when the agency filed its permanent custody motion, the children had not yet been in its temporary custody for 12 months. The father additionally argues that he can provide the children with a legally secure permanent placement.

#### A. Standard of Review

{¶44} Generally, a reviewing court will not disturb a trial court’s permanent custody judgment unless the judgment is against the manifest weight of the evidence.<sup>1</sup> *E.g.*, *In re B.E.*, 2014-Ohio-3178, ¶ 27 (4th Dist.); *In re R.S.*, 2013-Ohio-5569, ¶ 29 (4th Dist.). When an appellate court reviews whether a trial court’s permanent custody judgment is against the manifest weight of the evidence, the court “ ‘weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.’ ” *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist. 2001), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). We further observe, however, that issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984): “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” Moreover, deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much

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<sup>1</sup> Although the mother asserts that the standard of review applicable to a trial court’s permanent custody judgment is the abuse-of-discretion standard, this court has not applied that standard. *E.g.*, *In re B.E.*, 2014-Ohio-3178, ¶ 27 (4th Dist.). Moreover, the Ohio Supreme Court held that the appropriate standards to apply when reviewing a trial court’s permanent custody judgment are the “sufficiency-of-the-evidence and/or manifest-weight-of-the-evidence standards, as appropriate depending on the nature of the arguments that are presented by the parties.” *In re Z.C.*, 2023-Ohio-4703, ¶ 18.

evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger*, 77 Ohio St.3d 415, 419 (1997); accord *In re Christian*, 2004-Ohio-3146, ¶ 7 (4th Dist.).

{¶45} The question that an appellate court must resolve when reviewing a permanent custody decision under the manifest-weight-of-the-evidence standard is "whether the juvenile court's findings . . . were supported by clear and convincing evidence." *In re K.H.*, 2008-Ohio-4825, ¶ 43. "Clear and convincing evidence" is:

the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

*In re Estate of Haynes*, 25 Ohio St.3d 101, 103-04 (1986).

{¶46} In determining whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel*, 55 Ohio St.3d 71, 74 (1990); accord *In re Holcomb*, 18 Ohio St.3d 361, 368 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469 (1954) ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof.").

{¶1} Thus, if a children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's judgment is not against the manifest weight of the evidence. *In re R.M.*, 2013-Ohio-3588, ¶ 62 (4th Dist.); *In re R.L.*, 2012-

Ohio-6049, ¶ 17 (2d Dist.), quoting *In re A.U.*, 2008-Ohio-187, ¶ 9 (2d Dist.) (“A reviewing court will not overturn a court’s grant of permanent custody to the state as being contrary to the manifest weight of the evidence ‘if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements . . . have been established.’”). A reviewing court should find a trial court’s permanent custody judgment against the manifest weight of the evidence only in the “exceptional case in which the evidence weighs heavily against the [decision].” *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175; see *Black’s Law Dictionary* (12th ed. 2024) (the phrase “manifest weight of the evidence” “denotes a deferential standard of review under which a verdict will be reversed or disregarded only if another outcome is obviously correct and the verdict is clearly unsupported by the evidence”).

#### B. Permanent Custody Procedure

{¶47} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child’s best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying purposes of R.C. Chapter 2151: “to care for and protect children, ‘whenever possible, in a family environment, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety.’” *In re C.F.*, 2007-Ohio-1104, ¶ 29, quoting R.C. 2151.01(A).



## 1. R.C. 2151.414(B)(1)

**{¶48}** R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and, as relevant here, the following circumstance applies:

(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

**{¶49}** R.C. 2151.414(E) requires a court that is determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents to consider all relevant evidence. The statute further specifies that if one or more of the following conditions exist "as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent":

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

...

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

...

(16) Any other factor the court considers relevant.

**{¶50}** A trial court may base its decision that a child cannot or should not be placed with either parent within a reasonable time upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. See *C.F.*, 2007-Ohio-1104, at ¶ 50; *In re William S.*, 75 Ohio St.3d 95, 99 (1996); see, e.g., *In re L.R.B.*, 2020-Ohio-6642, ¶ 52 (2d Dist.); *In re Hurlow*, 1998 WL 655414, \*4 (4th Dist. Sept. 21, 1998).

**{¶51}** In the case before us, competent, clear and convincing evidence supports the trial court's finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent. The evidence supports a finding that under R.C. 2151.414(E)(1), the mother failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the children's home. At the time of the permanent custody hearing, the mother still was attempting to successfully complete a substance abuse treatment program. Before entering this treatment program, the mother had unsuccessfully attempted multiple treatment programs. The court also found that the mother surrounded herself with "unsafe" individuals. The court believed that the mother's conduct illustrated that she lacked the stamina to successfully complete a treatment program and provide a safe environment for the children. Thus, at the time of the permanent custody hearing, the mother had not substantially remedied the conditions that led to the children's removal.

**{¶52}** The evidence further supports a finding that under R.C. 2151.414(E)(4), the father demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with the children when able to do so. As the trial court observed, the father attended few court hearings and failed to contact the agency to initiate visitations with the children. Additionally, he offered no excuse for not contacting the agency to establish visits with the children. Thus, clear and convincing evidence supports the trial court's finding that the children cannot be placed with the father within a reasonable time or should not be placed with him.

**{¶53}** Moreover, we note that although the father faults the trial court for failing to cite to the record to support its R.C. 2151.414(B)(1)(a) finding, he has not cited any

authority that requires a trial court to do so. Therefore, we summarily reject this argument.

{¶54} In sum, the trial court’s finding that the children cannot be placed with either parent or should not be placed with either parent is not against the manifest weight of the evidence.

## 2. Best Interest

{¶55} The parents next claim that the trial court’s best interest finding is against the manifest weight of the evidence. The mother states that the children wish to be reunified with her and with each other and that she was making progress in maintaining sobriety. The father claims that a weighing of the best interest factors indicates that the children should be placed with him.

{¶56} R.C. 2151.414(D) directs a trial court to consider “all relevant factors,” as well as specific factors, to determine whether a child’s best interest will be served by granting a children services agency permanent custody. The listed factors include: (1) the child’s interaction and interrelationship with the child’s parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) the child’s wishes, as expressed directly by the child or through the child’s GAL, with due regard for the child’s maturity; (3) the child’s custodial history; (4) the child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.

{¶57} Deciding whether a grant of permanent custody to a children services agency will promote a child’s best interest involves a delicate balancing of “all relevant

[best interest] factors,” as well as the “five enumerated statutory factors.” *C.F.*, 2007-Ohio-1104, at ¶ 57, citing *In re Schaefer*, 2006-Ohio-5513, ¶ 56. However, none of the best interest factors requires a court to give it “greater weight or heightened significance.” *Id.* Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 2017-Ohio-142, ¶ 24 (3d Dist.); *In re A.C.*, 2014-Ohio-4918, ¶ 46 (9th Dist.). In general, “[a] child’s best interest is served by placing the child in a permanent situation that fosters growth, stability, and security.” *In re C.B.C.*, 2016-Ohio-916, ¶ 66 (4th Dist.), citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324 (1991).

{¶58} In the case at bar, as we explain below, we believe that the record contains ample, clear and convincing evidence to support the trial court’s decision that placing the children in the agency’s permanent custody is in their best interests. The record does not support a finding that the trial court committed a manifest miscarriage of justice. Therefore, the trial court’s best interest determination is not against the manifest weight of the evidence.

a. Children’s Interactions and Interrelationships

{¶59} The evidence shows that the children are thriving in their respective foster homes and that the foster homes provide the children with a safe, stable, and secure environment in which to develop. The children are bonded with their foster families and with each other. The children have been visiting each other when they visit their mother at the agency, and the foster parents announced intentions to continue allowing the children to visit one another if the court places the children in the agency’s permanent custody.

{¶60} The evidence further establishes that the mother loves her children. However, the evidence also demonstrates that the mother’s substance abuse has prevented her from engaging in healthy relationships with her children and has placed them at risk of harm.

{¶61} The trial court found that the father’s relationship with the children has been nonexistent. The evidence also shows that the two boys have unresolved anger toward their father. The boys also stated that the father is “mean” and that they “do not want to see him, or have any interaction with him at all because of his abuse” when the mother and the father were together. This evidence suggests that the father does not share a healthy relationship with the children.

b. Children’s Wishes

{¶62} The three older children indicated a desire to reunify with the mother. The children’s guardian ad litem recommended that the court place them in the agency’s permanent custody. *C.F.*, 2007-Ohio-1104, at ¶ 55 (R.C. 2151.414 “unambiguously gives the trial court the choice of considering the child’s wishes directly from the child or through the guardian ad litem”); *In re S.M.*, 2014-Ohio-2961, ¶ 32 (4th Dist.) (recognizing that R.C. 2151.414 permits juvenile courts to consider a child’s wishes as child directly expresses or through the GAL).

{¶63} None of the children expressed a desire to live with the father.

c. Custodial History

{¶64} The children have been in the agency’s temporary custody since May 2022, and have remained in its continuous temporary custody since that time. When the agency filed its permanent custody motion, the children had not yet been in its

temporary custody for 12 or more months of a consecutive 22-month period. At the time of the December 2023 permanent custody hearing, the children had been in the agency's temporary custody for about 19 months.

d. Legally Secure Permanent Placement

{¶65} “Although the Ohio Revised Code does not define the term, ‘legally secure permanent placement,’ this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child’s needs will be met.” *In re M.B.*, 2016-Ohio-793, ¶ 56 (4th Dist.), citing *In re Dyal*, 2001 WL 925423, \*9 (4th Dist. Aug. 9, 2001) (implying that “legally secure permanent placement” means a “stable, safe, and nurturing environment”); see also *In re K.M.*, 2015-Ohio-4682, ¶ 28 (10th Dist.) (observing that legally secure permanent placement requires more than stable home and income but also requires environment that will provide for child's needs); *In re J.H.*, 2013-Ohio-1293, ¶ 95 (11th Dist.) (stating that mother unable to provide legally secure permanent placement when she lacked physical and emotional stability and that father unable to do so when he lacked grasp of parenting concepts). Thus, “[a] legally secure permanent placement is more than a house with four walls. Rather, it generally encompasses a stable environment where a child will live in safety with one or more dependable adults who will provide for the child’s needs.” *M.B.* at ¶ 56.

{¶66} In the case before us, clear and convincing evidence supports the trial court’s finding that the children need a legally secure permanent placement and that they can only achieve this type of placement by granting the agency permanent custody. Throughout the pendency of the case, the mother was unable to meaningfully engage in substance abuse treatment and had multiple trips in and out of treatment

centers. At the time of the permanent custody hearing, the mother had entered yet another treatment program. The court also noted that the mother had not separated herself from “unsafe” individuals. Thus, the mother did not have a legally secure permanent placement for the children.

{¶67} The father did not present any evidence that he had a legally secure permanent placement for the children. He was uninvolved for the vast majority of the case. When he was involved, he was combative and uncooperative. Nothing in the record (other than the mother’s conclusory testimony) suggests that the father can provide the children with a legally secure permanent placement.

{¶68} The record thus supports the trial court’s finding that the children need a legally secure permanent placement and that they cannot achieve this type of placement without placing them in the agency’s permanent custody.

{¶69} Based upon all of the foregoing evidence, the trial court could have formed a firm belief that placing the children in the agency’s permanent custody is in their best interests. Thus, its judgment is not against the manifest weight of the evidence.

{¶70} Accordingly, based upon the foregoing reasons, we overrule the mother’s first and second assignments of error and the father’s first assignment of error.

## II. Failure to Appoint Counsel

{¶71} In her third assignment of error, the mother argues that the trial court erred by failing to appoint counsel to represent the children. She asserts that “the three oldest children consistently expressed a desire to be reunited with” her.

{¶72} We initially observe that the mother did not request the trial court to appoint independent counsel for the children. Therefore, she failed to preserve the issue for



purposes of appeal. *In re B.J.L.*, 2019-Ohio-555, ¶ 41 (4th Dist.), citing *In re C.B.*, 2011-Ohio-2899, ¶ 18. We nevertheless may review this assignment of error for plain error. See *Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife*, 2015-Ohio-3731, ¶ 27 (stating that reviewing court has discretion to consider forfeited constitutional challenges).

{¶73} For the plain error doctrine to apply, the party claiming error must establish (1) that “an error, i.e., a deviation from a legal rule” occurred, (2) that the error was “an “obvious” defect in the trial proceedings,” and (3) that this obvious error affected substantial rights, i.e., the error “must have affected the outcome of the trial.” *State v. Rogers*, 2015-Ohio-2459, ¶ 22, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002); *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 209 (1982) (“A ‘plain error’ is obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse [e]ffect on the character and public confidence in judicial proceedings.”).

{¶74} The plain error doctrine is not, however, readily invoked in civil cases. Instead, an appellate court “must proceed with the utmost caution” when applying the plain error doctrine in civil cases. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997). The Ohio Supreme Court has set a “very high standard” for invoking the plain error doctrine in a civil case. *Perez v. Falls Financial, Inc.*, 87 Ohio St.3d 371, 375 (2000). Thus, “the doctrine is sharply limited to the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Goldfuss*, 79 Ohio

St.3d at 122; *accord Gable v. Gates Mills*, 2004-Ohio-5719, ¶ 43. Moreover, appellate courts “should be hesitant to decide [forfeited errors] for the reason that justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.” *Risner v. Ohio Dept. of Nat. Resources, Ohio Div. of Wildlife*, 2015-Ohio-3731, ¶ 28, quoting *Sizemore v. Smith*, 6 Ohio St.3d 330, 332, fn. 2 (1983); *accord Mark v. Mellott Mfg. Co., Inc.*, 106 Ohio App.3d 571, 589 (4th Dist.1995) (“Litigants must not be permitted to hold their arguments in reserve for appeal, thus evading the trial court process.”).

{¶75} Additionally, “[t]he plain error doctrine should never be applied to reverse a civil judgment . . . to allow litigation of issues which could easily have been raised and determined in the initial trial.” *Goldfuss*, 79 Ohio St.3d at 122. Instead, “the idea that parties must bear the cost of their own mistakes at trial is a central presupposition of our adversarial system of justice.” *Id.* at 121, quoting *Montalvo v. Lapez*, 77 Haw. 282, 305, 884 P.2d 345 (1994) (Nakayama, J., concurring in part and dissenting in part).

{¶76} As we explain below, we do not believe that the trial court committed an error, plain or otherwise, by failing to appoint—or by failing to inquire whether to appoint—independent counsel for the children.

{¶77} “[A] child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances.” *In re Williams*, 2004-Ohio-1500, syllabus, citing R.C. 2151.352, Juv.R. 4(A), and Juv.R. 2(Y). *Williams* does not mandate that a child always have independent counsel in a juvenile court proceeding to terminate parental rights.

Instead, a child is entitled to independent counsel in a parental rights termination proceeding only when “certain circumstances” exist. *Id.*

{¶78} The *Williams* court did not explicitly explain the “certain circumstances” that would warrant the appointment of independent counsel. Instead, the court offered the following guidance for juvenile courts to follow when ascertaining if “certain circumstances” exist: “courts should make a determination, on a case-by-case basis, whether the child actually needs independent counsel, taking into account the maturity of the child and the possibility of the guardian ad litem being appointed to represent the child.” *Id.* at ¶ 17. Furthermore, a juvenile court must appoint independent counsel for a child “when a guardian ad litem who is also appointed as the juvenile’s attorney recommends a disposition that conflicts with the juvenile’s wishes.” *Id.* at ¶ 18. This court and others have interpreted *Williams* to mean that a trial court ordinarily should appoint independent counsel for a child “when the child has consistently and repeatedly expressed a strong desire that differs and is otherwise inconsistent with the guardian ad litem’s recommendations.” *In re V.L.*, 2016-Ohio-4898, ¶ 39 (12th Dist.), quoting *In re B.K.*, 2011-Ohio-4470, ¶ 19 (12th Dist.); accord *In re A.G.*, 2024-Ohio-3091, ¶ 62 (9th Dist.); *In re E.A.G.*, 2024-Ohio-315, ¶ 90 (4th Dist.); *In re Hilyard*, 2006-Ohio-1965, ¶ 36 (4th Dist.).

{¶79} In the case at bar, the three oldest children did not consistently and repeatedly express a strong desire that differs and is otherwise inconsistent with the guardian ad litem’s recommendations. Thus, we do not believe that the trial court plainly erred by failing to appoint counsel to represent the children. Furthermore, even if the trial court erred, we cannot state that the case at bar is one of those rare cases

“involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affect[ed] the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Goldfuss*, 79 Ohio St.3d at 122.

{¶80} Accordingly, based upon the foregoing reasons, we overrule the mother’s third assignment of error.

### III. Motion to Continue

{¶81} In his second assignment of error, the father asserts that the trial court abused its discretion by overruling his motion to continue the December 21, 2023 permanent custody hearing. We do not agree.

{¶82} “The determination whether to grant a continuance is entrusted to the broad discretion of the trial court.” *State v. Conway*, 2006-Ohio-791, ¶ 147, citing *State v. Unger*, 67 Ohio St.2d 65 (1981), syllabus. Consequently, “[a]n appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.’ ” *State v. Jones*, 91 Ohio St.3d 335, 342 (2001), quoting *Unger*, 67 Ohio St.2d at 67. “[A]buse of discretion [means] an ‘unreasonable, arbitrary, or unconscionable use of discretion, or . . . a view or action that no conscientious judge could honestly have taken.’ ” *State v. Kirkland*, 2014-Ohio-1966, ¶ 67, quoting *State v. Brady*, 2008-Ohio-4493, ¶ 23. “An abuse of discretion includes a situation in which a trial court did not engage in a ‘ “sound reasoning process.” ’ ” *State v. Darmond*, 2013-Ohio-966, ¶ 34, quoting *State v. Morris*, 2012-Ohio-2407, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). The abuse-

of-discretion standard is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court. *Darmond* at ¶ 34.

{¶83} The Ohio Supreme Court has adopted a balancing approach that recognizes “all the competing considerations” to determine whether a trial court’s denial of a motion to continue constitutes an abuse of discretion. *Unger*, 67 Ohio St.2d at 67. In exercising its discretion, a trial court should “[w]eigh[] against any potential prejudice to a defendant . . . concerns such as a court’s right to control its own docket and the public’s interest in the prompt and efficient dispatch of justice.” *Id.* A court also should consider: (1) the length of the delay requested; (2) whether other continuances have been requested and received; (3) the inconvenience to litigants, witnesses, opposing counsel and the court; (4) whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; (5) whether the defendant contributed to the circumstance that gives rise to the request for a continuance; and (6) other relevant factors, depending on the unique circumstances of the case. *Id.*; *Conway*, 2006-Ohio-791, at ¶ 147; *State v. Jordan*, 2004-Ohio-783, ¶ 45.

{¶84} “ ‘There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.’ ” *Unger*, 67 Ohio St.2d at 67, quoting *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964); *State v. Broom*, 40 Ohio St.3d 277, 288 (1988) (“Obviously, not every denial of a continuance constitutes a denial of due process.”). Furthermore, “[o]n review we must look at the facts of each case and the [appellant] must show how he was prejudiced by the denial of the continuance before there can be

a finding of prejudicial error.” *Broom*, 40 Ohio St.3d at 288. Additionally, with respect to the continuance of juvenile court hearings, Juv.R. 23 provides that “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.”

{¶85} In the case before us, nothing suggests that the trial court abused its discretion by overruling the father’s request to continue the December 21, 2023 permanent custody hearing. At the time of that hearing, the trial court already had continued the hearing once to accommodate the father’s request for counsel upon his first appearance in court, which notably did not occur until October 2023. Furthermore, the trial court found that the father’s obstinateness caused his previous counsel to withdraw and the most recent counsel to agree to represent the father on a standby-only basis. The trial court could have quite reasonably concluded that the father contributed to the circumstances that gave rise to his continuance request and that the request was for dilatory purposes. Consequently, we do not agree with the father that the trial court abused its discretion by overruling his motion to continue the December 21, 2023 permanent custody hearing.

{¶86} Accordingly, based upon the foregoing reasons, we overrule the father’s second assignment of error.

#### CONCLUSION

{¶87} Having overruled the mother’s and the father’s assignments of error, we affirm the trial court’s judgment.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and the mother and the father shall equally pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: \_\_\_\_\_  
Kristy S. Wilkin, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**